SUPREME COURT OF THE UNITED STATES.

No. 208.—October Term, 1934.

Herbert H. Waxham, doing business as Waxham Hatcheries, Petitioner,
vs.
Samuel B. Smith and the Buckeye Incubator Company.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[January 7, 1935.]

Mr. Justice Stone delivered the opinion of the Court.

In this companion case to No. 102, *Smith* v. *Snow*, decided this day, certiorari was granted, — U. S. —, to review a decree of the Court of Appeals for the Ninth Circuit, 70 F. (2d) 457, which affirmed the decree of the district court and held valid and infringed the first claim of the Smith Patent, No. 1,262,860, of April 16, 1918, for an improved apparatus and method for the incubation of eggs.

The issues here, as in the *Snow* case, are the scope of Claim 1 and its infringement as rightly construed. For reasons stated at length in the opinion in the *Snow* case, our decision as to the scope of the claim is the same as in that case. Petitioner argues that the claim, if thus broadly construed, is invalid, as an attempt to patent the function performed by the petitioner's incubator. See *Risdon Iron and Locomotive Works* v. *Medart*, 158 U. S. 68, 77. It is said also that the function of the machine involves merely the application of the natural law that heat units flow from warm to cooler objects placed in proximity. But the function which a machine performs, here the hatching of eggs, is to be distinguished from the means by which that performance is secured. It is true that Smith made use of the difference in temperature of eggs in different stages of incubation, and the flow of heat units from one to the other, in achieving the desired result. He did this by arrangement of the eggs in staged incubation and applying to them a current of heated air under the conditions specified in Claim 1. By the use of materials in a particular manner he secured the performance of the function by a means which had never occurred in nature, and had not been anticipated by the prior art; this is a patentable method